IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7998 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SHARDABEN WD/O CHUNIBHAI C. PATEL & ANR. - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :
Shri A.J. Patel for Petitioner(s) : 1 - 2.
Shri A.Y. Kogje, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/03/2007

ORAL JUDGMENT

By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the orders annexed at Annexures 'C', 'D' and 'E', being Order dated 27th September, 1985 passed by the Deputy Collector in Case No.RTS.Revision.19/84, Order dated 28th

September, 1987 passed by the Collector, Kheda in RTS/RA/21/87 and the order dated 11th February, 1992 passed by the Additional Secretary (Appeals), Revenue Department, in Case No. SRD/KH/HKP/21/88, on the ground that the said orders are based on the fact which does not exist and even to ascertain the correct facts, an inquiry was not made, but, an order came to be passed against the petitioner's interest.

2. The facts of the case in a nutshell are that the petitioner, Sharadaben, widow of Chunibhai, having two children, wanted to dispose of her land bearing Survey No.940 of Village-Vasad, Taluka-Anand, District-Kheda. When the application for alienation came up for consideration, the authorities, relying upon the revenue records, held that the land being new tenure cannot be allowed to be transferred. It was held by the authorities that though the land was originally recorded as old tenure, but, a pencil entry was made somewhere in the year 1930-31 that it was new tenure. The permission was refused and the orders thereafter were confirmed.

3. Shri Patel, learned Counsel for the petitioner, submits that if there is no basis for making the pencil entry and the State has not brought any evidence on the record to prove that the pencil entry was correct, then, the pencil entry would assume no importance. His submission is that in a case of disputed facts, the authorities were required to give appropriate opportunity to the petitioner to prove that the land was old tenure and that there was no basis for making the entry that the land was new tenure.

4. Shri Kogje, learned Assistant Government Pleader, contesting the case, submitted that once the pencil entry is available, then, the said pencil entry would assume importance and would decide

the fate of the case. On being asked that what was the evidence before the authorities and whether on some intervening circumstances, the pencil entry was made, Shri Kogje submitted that he does not have any document to show that why such an entry was made. He, however, admitted that no inquiry was made into the matter and no opportunity of leading evidence was also given to the petitioner.

5. On the undisputed facts that the land was recorded as old tenure and somebody had made some pencil entry that it was new tenure, the authorities were obliged to make an inquiry that who made the entry, why such entry was made and under whose authority such entry came to be made, if the entry was a tentative entry, then, why it was not confirmed, approved and certified, and why such pencil entry would be binding upon the parties. In a case of present nature, the authorities were obliged to make an inquiry into the facts and were also required to give appropriate opportunity to the petitioner to prove her case that the land was old tenure and the pencil entry was not to affect her rights adversely. As the matter has been conducted in a very cavalier manner, I am unable to approve the orders passed by the authorities. The orders at Annexures 'C', 'D' and 'E' deserve to and are, accordingly, quashed. The matter is remitted to the competent authority for deciding the matter afresh with an opportunity to the petitioner to lead evidence and submit her case before the authority. The petitioner shall appear before the said authority on 23rd April, 2007 with a copy of this order, enabling the authority to know that what the authority is required to do. The authority shall dispose of the matter finally within a period of six months from the date of the appearance of the petitioner. The petition is, accordingly, disposed of. Rule is made absolute. No costs.

[R.S.Garg, J.]

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